I am satisfied that in the present case the failure to write down the questions and answers in no way prejudiced the accused and is, therefore, a mere irregularity curable under section 448 of the Code. The questions appear to have been put with a view to enabling the accused to explain some of the statements made in his statement to the Customs Officer and such admissions as are contained in his answers to the Court had been made in his statement to the Customs Officer which had already been given in evidence.

I therefore dismissed the appeal against the conviction, whereupon the learned Counsel for the appellant applied for an order that the fine be paid by instalments. Whether such an application was made to the learned Magistrate in the Court below I do not know; but in view of the fact that the appellant has undergone more than one trial I acceded to this application and ordered that the fine be paid by instalments, $500 to be paid forthwith and the balance to be paid by monthly instalments of $200 commencing from the 1st January, 1953.

Appeal dismissed.

ABDUL HAMID BIN MOHAMED v. PUBLIC PROSECUTOR.

[A. Cr. J. (Sir Charles Murray-Aynsley, C.J., Singapore, Wilson and Briggs, JJ.) December 29, 1952]

[K.L. — F.M. Criminal Appeal No. 88 of 1952]

Prevention of Corruption Ordinance, 1950, ss. 3 and 13 — Whether witnesses are worthy of credit.

This was an appeal arising out of the conviction of the appellant on a charge under the Prevention of Corruption Ordinance. The appellant was a Police Sergeant who at material times was employed in the Traffic Branch with the particular duty of dealing with private cars used illegally for the conveyance of passengers for hire. It was alleged that on two occasions he had taken bribes to release cars which had been detained on suspicion that they had been so used. The case against the appellant rested on the evidence of the persons who gave the bribes. The learned Chief Justice who as the trial Judge, held that it was the appellant who solicited the bribes and it was not the witnesses who in the first place offered them. He therefore held that section 13 of the Prevention of Corruption Ordinance was applicable and that the witnesses were not unworthy of credit.

Held: (Wilson and Briggs, JJ., Sir Charles Murray-Aynsley, C.J., dissenting): (1) there was evidence to support the findings of the learned Chief Justice that it was the appellant who took the initiative by demanding the bribes and it was not the witnesses who in the first place offered them; (2) the learned Chief Justice was right in holding that section 13 of the Prevention of Corruption Ordinance applied and in holding that the witnesses were persons who should not be presumed to be unworthy of credit.

Case referred to:—

(1) *Daimon bin Banda v. Public Prosecutor* p. 23 *ante;* (1951) M.L.R. 97.

COURT OF APPEAL.

F. G. Charlesworth for the appellant.

J. D. Peterkin (D.P.P.) for the respondent.

The facts sufficiently appear from the judgment.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J., (S.) : — This case arose out of a charge under section 3(a) of the Prevention of Corruption Ordinance (No. 5 of 1950) for which the appellant was convicted and sentenced. The facts were, briefly, as follows:—

The appellant was a Police sergeant who at material times was employed in the Traffic Branch with the particular duty of dealing with private cars used illegally for the conveyance of passengers for hire. It was alleged that on two occasions he had taken bribes to release cars which had been detained on suspicion that they had been so used.

As frequently happens in these cases, the prosecution had to rely on the evidence of accomplices. This by itself would not, of course, have of necessity been fatal, provided that the learned Judge had sufficiently directed his mind to the question. In the present case the learned Judge relied on sub-section (3) of section 13 of the same Ordinance. He used the following words:—

"I have been referred to the case of **Daimon bin Banda** v. P. P.[1], where it was held that the effect of sub-section (3) of section 13 of the Prevention of Corruption Ordinance 1950 is that, in corruption cases a person is no longer to be presumed unworthy of credit merely by reason of the fact that he has made or caused to be made an improper payment. It is pointed out that if the giver of the bribe has, for example, actively corrupted a public officer then he must be treated as an accomplice. On these charges it was the accused who solicited the bribe and not Yap Choy or the drivers who actively corrupted him."

Substantially this appeal is concerned with the question whether this is a correct interpretation of the sub-section and whether it is properly applied in view of the facts in this case.

It is not easy to interpret the sub-section. Clearly it is intended as a modification of illustration (b) of section 114 of the Evidence Ordinance. The section itself deals with inferences of fact and illustrations (a) and (b) are merely typical instances of inferences of fact that a Court may draw. Later on it is pointed out that in certain circumstances the inference should not be drawn and gives a rather far-fetched example of such a case. But in any case it is not a technical matter but a rule of practice, which is the result of practical experience. It is hard to see how an accomplice could be presumed to be more credible in a case under the Ordinance in question than in any other case. If taken quite literally it would mean nothing

at all because mere payment without the specific intention required by the Ordinance would not make a person an accomplice in any event. As interpreted in *Daimon's case*[1] it is interpreted as merely reiterating what was already the practice, namely, that where there is a great disparity in the guilt of the informer and the accused the inference should not be drawn. Whether that can be said of the two accomplices who, in the present case, testified to the receiving of bribes by the appellant has, therefore, to be considered.

In my experience of cases of this kind one gets every degree of variation in the relative guilt of the briber and bribed. At one end of the scale there is the policeman or other public officer who misuses his powers to extort money from the public. At the other there is the miscreant who hopes by the offer of a large sum of money to suborn a public officer from his duty. In between there is what I think constitutes the bulk of these cases, an officer willing to accept bribes and members of the public who are quite willing to resort to bribery if they achieve their ends thereby.

In this last category I think that both are equally guilty and that in such cases the sub-section should not be applied.

We must consider in which category the two accomplices in the present case should be placed. One of them, Yap Choy, professed to have arranged the payment in both instances. On his own showing he was ready to act as an intermediary and to give bribes when requested. The inference to be drawn from the evidence for the prosecution is that he was well known as a "fixer". I think it is quite clear that he should not be treated as coming within the sub-section.

The other informer to be considered was one Leow Pak Lian. He was the driver of a car which was stopped and detained by the appellant. When this happened he approached Yap Choy, hoping to make use of his influence. I think that one would be very innocent if one did not suppose that what this witness expected from the start was that a suitable bribe would be arranged. I do not consider that he can be treated as coming within the sub-section.

This means that, in my opinion, the learned Judge misdirected himself when he applied the sub-section to the evidence of these witnesses. In *Daimon's case*[1] (*ante*, at p. 24) the words "for example" are used. In the grounds of judgment this is treated as meaning unless he has actively corrupted. I think that this is not a correct interpretation of the sub-section. I consider that a misdirection of this kind is of much the same character as where a direction is given that something is corroboration when it is not. Unless there is sufficient evidence otherwise the conviction should be quashed. There is no other evidence in this case and, in my opinion, the appeal should be allowed and the conviction quashed.

Wilson, J. : — The appellant was convicted on two charges of corruptly accepting money as an inducement for showing favour in relation to his principal's affairs, offences contrary to section 3 (a) of the Prevention of Corruption Ordinance No. 5 of 1950. The appellant was a Police Sergeant who had seized two private cars alleged to have been used illegally for conveyance of passengers for hire. According to the evidence Leow Pak Lian, the driver of the first car, approached a friend, by name of Yap Choy, and asked him to help him by speaking to the Sergeant about the release of his car. At one time Yap Choy was a detective. Yap Choy later told him that the car would be released on payment of $60 to the Sergeant. Leow Pak Lian gave Yap Choy $60 and saw Yap Choy hand over ten-dollar notes to the appellant. Yap Choy said that Leow Pak Lian had asked him to help him to get his car back. He said : — "I know some of the Traffic Branch. I said I would see what I could do." He says he saw the appellant and asked him if he could help. The appellant said he could do it on payment of tea-money. At first he wanted $100 but later agreed to accept $60. Yap Choy said that when he went to the appellant to ask for help he did not know the appellant would ask for money. Yap Choy says that he handed over $60 to the Sergeant. The car was in fact released.

The evidence of Siew Yim Chong, the driver of the second car, is much the same. His car having been seized, he also approached Yap Choy and because he knew the people in the Police Force he wished to get his help about his car. Yap Choy offered to settle the matter for $60 and he gave $60 to Yap Choy. Yap Choy says he gave the $60 to the appellant but this was not done in the presence of Siew Yim Chong or any witness.

It was urged by the defence that both cases against the accused were framed by Yap Choy. In his judgment the learned trial Judge refers to the case of *Daimon bin Banda v. P. P.*[1] and section 13 of the Prevention of Corruption Ordinance, 1950. Under that section it is laid down that "no witness shall in any such trial be presumed to be unworthy of credit by reason only of any payment by him or on his behalf of any money, gift or other consideration to an agent." The trial in this case was a trial to which the sub-section applies. It remains to be considered whether the three witnesses referred to above are witnesses who shall not be presumed to be unworthy of credit. In

the case referred to above, the Court of Appeal held that :—

"The effect of section 13(3) of the Ordinance is that, in corruption cases, a person is no longer to be presumed unworthy of credit merely by reason of the fact that he has made, or caused to have made, an improper payment. If, however, he has taken some more infamous part in the transaction, for example actively corrupted the public officer into accepting the bribe, the new provision does not cover his testimony."

In the charges under appeal the case for the prosecution was that the appellant himself sought the bribe and that they were not offered to him by Yap Choy. If that is accepted, it seems to me that the three witnesses are all persons who shall not be presumed to be unworthy of credit. Admittedly, according to their own stories, they voluntarily paid money, or caused it to be paid, to the appellant. That action no doubt is reprehensible but it would seem the action of any witness who is not to be presumed under this sub-section to be unworthy of credit is reprehensible. Therefore, in accordance with the decision of the Court of Appeal quoted above, the witness must have taken some more infamous part in the transaction, for example, actively corrupting the officer into accepting the bribe. If the appellant asked for the bribe, it cannot be said that by paying it as a result of the demand he has corrupted the person who received it. I consider that all three witnesses were persons who should not be presumed to be unworthy of credit.

The learned trial Judge stated in his judgment that on these charges it was the accused who solicited the bribe and not Yap Choy or the drivers who actively corrupted him. Whether the appellant demanded a bribe, or whether the witnesses offered a bribe which he corruptly accepted, was a question of fact for the trial Judge. The learned trial Judge considered the evidence with the greatest care and I am of opinion he was perfectly justified in accepting the evidence for the prosecution, and in my opinion the appeals should be dismissed, both as regards conviction and sentence.

Briggs, J. : — The appellant was convicted on two charges of corruptly accepting a sum of money, in each case $60, as a bribe for taking certain action in the course of his duty as a Police Sergeant. The appellant was employed by the Traffic Department of the Police at Kuala Lumpur on the special duty of checking the improper use of private motor-cars as taxis. It was apparently his duty, on suspecting that a private motor-car was being unlawfully used as a taxi, to take the motor-car and its occupants to the Police Station at High Street and detain the motor-car pending investigation. He did so in the case of two motor-cars, the property of Yap Kiat Ching and Siew Yim Chong, the two transactions taking place within a short time of one another.

The case for the prosecution as regards the first car was that the driver Leow Pak Lian, wishing to have his car released, approached a friend of his, Yap Choy, and asked for his assistance in the matter. Yap Choy had at one time been in the Police Force, and the driver evidently believed that he might know or have influence with the Police. The evidence is that the driver asked Yap Choy to help him by speaking to the Sergeant about the release of his car, and that Yap Choy agreed to do so. There is no evidence that there was at that stage any suggestion either from the driver or from Yap Choy that a bribe should be offered. It may have appeared to their minds as a possibility that one might be needed; but there is no necessity to infer this, and even if such an inference is drawn it does not appear to affect the matter. Yap Choy went to see the Sergeant of Police and asked him to release the car. Again, there is no evidence that at that stage Yap Choy offered a bribe. The Police Sergeant, however, at once said that he would release the car if a bribe of $100 was paid to him, though he used the politer term "tea money". A sum of $60 was then agreed upon, and Yap Choy went back to report to the driver. The driver agreed to the proposal and handed $60 to Yap Choy, and Yap Choy later gave it to the Sergeant in the driver's presence.

The evidence for the prosecution on the other charge was similar, except that after the seizure of the car the driver, whilst still uncertain what to do, met Yap Choy apparently by chance and explained the situation to him. He said "I wanted to get his help about my car". According to his evidence, Yap Choy then said that he could settle the matter with the Police Sergeant if the driver would pay the Sergeant a bribe of $60. The driver agreed and handed Yap Choy $60. Later he was allowed to take back the car. As regards the second case, Yap Choy said that the situation was the same as in the first case, that in fact he had seen the Sergeant on two occasions, that on the first occasion he had not offered a bribe, but had merely asked for the release of the car, and that the Sergeant had said he would release it for $100. Again they agreed on the sum of $60, and Yap Choy went back to the driver and explained that that bribe would have to be paid if the car was to be released. It was only then that the driver gave him the $60, and he went back and paid it to the Sergeant. The driver was not present at the time of payment. It seems possible, on a fuller consideration of the evidence, that Yap Choy has given the correct version and that the driver's evidence suggesting only a single meeting with Yap

Choy was the result of insufficiently full description or inaccurate recollection. The evidence was given at a period of many months after the occurrence and it does not seem necessary to regard the discrepancy, if it be a discrepancy, with grave suspicion. So far as the driver is concerned, it seems clear that he did not in the first place offer the bribe. If Yap Choy is correct, he did not offer it either. In any event, if he did suggest before approaching the Sergeant that a bribe would have to be paid, this would be a very natural result of his experience with the Sergeant in connection with the first car, and would not necessarily mean that the corruption or intended corruption flowed initially from him. If it is notorious that a particular public servant is habitually corrupt, and that bribes must be paid to make him do his obvious duty, it is not necessarily active corruption to offer him a bribe. The learned trial Judge found as a fact that in the circumstances of this case it was in both instances the Sergeant who demanded the bribe and not the drivers or Yap Choy who offered it. The evidence fully entitled the learned Chief Justice to make such a finding, and there is no reason to disturb it. It was a finding which was necessary to his decision on the question whether Yap Choy and the two drivers were within the provisions of section 13(3) of the Prevention of Corruption Ordinance, No. 5 of 1950. The principal ground of appeal is that they were not within that sub-section and that the learned Chief Justice misdirected himself in holding that they were.

Counsel for the appellant took the somewhat bold course of asking this Court to say that sub-section (3), on a true construction, is really meaningless in that it does not speak of "improper payment" but merely of "payment". As the mere making of a payment with no knowledge of its impropriety could not possibly impose the disabilities of an accomplice, the sub-section would in that event have no effect in altering the existing law relating to corroboration of an accomplice's evidence. However attractive such an argument might at one time have appeared, it is not open to consideration in this Court now by reason of the decision in the case of *Daimon bin Banda v. Public Prosecutor*[1]. In that case, the Court of Appeal construed section 13(3) of the Ordinance and held that its effect was that in corruption cases "a person is no longer to be presumed unworthy of credit merely by reason of the fact that he has made, or caused to have made, an improper payment. If, however, he has taken some more infamous part in the transaction, for example, actively corrupted a public officer into accepting the bribe, the new provision does not cover his testimony". It would not be open to this Court to depart from that decision even if it desired to do so, nor does it appear necessary in any way to explain, limit or comment on it. The section now bears that meaning for all purposes in this country, and no argument to the contrary can be accepted. Conscious payment of a bribe must always make the payer an accomplice, but the degrees of guilt attaching to such payment could be taken into account even before the section was passed. The question now relevant is whether or not the payer actively corrupted the public officer into accepting the bribe, or otherwise took a part in the transaction more infamous than arises from the payment of a bribe alone. The legislature has seen fit to say in effect that, unless that greater degree of culpability exists, convictions may properly be based on the evidence of an accomplice alone. It would be wrong for the Court to try to maintain the old restrictive rules with regard to corroboration in the face of such authority, though a Court must still scrutinize credibility with all the usual care. The learned Chief Justice was in no doubt that the witnesses here were accomplices in the normal sense and examined their evidence with all the care appropriate to their position as such. Unless he misdirected himself as to their being within the sub-section, there is nothing in his findings with which an appellate Court should interfere.

In this case the evidence read in its normal sense clearly indicated that the Police Sergeant took the initiative by demanding the bribes, and it was not the witnesses who, in the first place, offered them. That being so, it seems impossible to say that they were guilty of actively corrupting him, and there are no special circumstances which would bring them within the words "some more infamous part" in *Daimon's* case. I consider that there was no misdirection, and that there was evidence to support the findings of the learned Chief Justice. In my opinion the appeal should be dismissed.

Appeal dismissed.

S. R. M. M. ANNAMALAI CHETTIAR v. LASSAM BINTI VEERAMANAWI.

[C. A. (Mathew, C.J., Sir Charles Murray-Aynsley, C.J. (S.) and Wilson, J.) December 3, 1952]

[K.L. — Civil Appeal No. 50 of 1952]

Agency — Power of attorney — Extent of power of delegation.

This is an appeal from the judgment of Buhagiar, J. reported in (1952) M.L.J. 226. The facts are set out fully in that judgment. Briefly, the donee of a Power of Attorney had delegated his Power to another who in turn had delegated it to a 3rd donee. The question is whether the donor conferred the Power to substitute.